

THE NYERI COUNTY WATER AND SEWERAGE SERVICES BILL, 2016

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THE NYERI COUNTY WATER AND SEWERAGE SERVICES BILL, 2016

A Bill for

AN ACT of the County Assembly of Nyeri to provide for development, regulation and management of Water and Sewerage Services, storm water management systems, water conservation and connected purposes.

Enacted by the County Assembly of Nyeri as follows;

PART 1 – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Nyeri County Water and Sewerage Services Bill, 2016 and shall come into operation on the date of publication in the Kenya Gazette and the County Gazette whichever comes earlier.

Interpretation

2. In this Act. Unless the context otherwise requires-
"County" means the County Government of Nyeri;
" County government" means the government of Nyeri County;
"Executive Member" means the county executive member for the time being responsible for water and sewerage services;
"licensee" means any. person who has been issued with a license under this Act;
"trade effluent" means any liquid, whether with or without suspended particles, or produced as a by-product in the course of any trade or industry;
"watercourse" means any natural channel or depression in which water flows regularly or intermittently;
"water service" means any service of or incidental to the supply of water services or the provision of sewerage services;
"water services provider". means a company, non governmental organization or other person or- body licensed to provide water services under and in accordance with an agreement as stipulated under section 8;

Objects of the Act

3. The Object and purpose of the Act is to provide for the development, management and regulation of water and sewerage service providers.

PART II – PROVISION OF WATER AND SEWERAGE SERVICES

Establishment of a Directorate of Water and Sewerage services
Director for Water and Sewerage Services

4. (1) There is established a Directorate known as the Directorate for Water and Sewerage Services.
5. (1) The Directorate shall be headed by the Director of Water and Sewerage Services.

- (2) The Director and all staff of the Directorate shall be appointed by the

County Public Service Board on such terms and conditions of services as the County Public Service may determine.

Other staff

6. The County Public Service Board may appoint such other officers and assistants as may be necessary for the effective functioning of the directorate.

Functions of the Directorate

7. (1) the functions of the Directorate shall be –
- (a) Collaborating with national and/or other county government(s)/departments in initiating, developing, coordinating and managing policies, strategies and plans for water Supply development and storm water drains Management services;
 - (b) monitoring and regulating water service providers and enforce license conditions;
 - (c) formulate, promote and monitor implementation of policies for sustainable growth of the water sector, in consultation with the private sector and in line with water institutions in the National Government;
 - (d) establish a mechanism for handling complaints from consumers regarding the quality or nature of water services; and
 - (e) facilitating public awareness and participation on sustainable water resources, sewerage services and storm water management;
 - (f) develop and promote policies, strategies and mechanisms for climate change mitigation and adaptation in the water sector;
 - (g) developing performance management system and overseeing its implementation by the agencies established under this Act;
 - (h) monitoring and evaluating the implementation of this Act and the water sector;
 - (i) acting as the repository of information and data on water sector;
 - (j) advising the Executive Committee Member on the necessary policies to be adopted for sustainable water resources management

Establishment of Water service Providers

Establishment of Water service Providers

8. (1) Water and sewerage services shall be established under the provisions of this Act.
(2) Water Service Providers shall manage Water and Sewerage Services under delegated Authority and shall be licensed by the County Government under the provisions of this Act.
(3) The County Executive Member shall by notice cause to be published in the County Gazette and/or Kenya Gazette all duly registered and licensed water service providers in the County.
(4) The water service provider shall be a company established under the Companies Act or a duly registered association or trust.

Board of Directors of County Water service Providers

9. (1) The Executive Committee Member shall Gazette Regulations for the appointment of the board of directors for water service providers and specify the respective qualifications, professional

	capacity, experience, tenure and conditions on corporate governance and integrity.
	(2) The members of the Board shall be nominated by the Different stakeholders within the Water Service providers subject to meeting the provisions of sub section (1) of this section.
Agreement with Water Service Providers	10. (1) Every water service provider licensed under this act shall enter into a written Service Provision Agreement (SPA) with the County Government for purposes of exercise and performance of all its powers and functions under the license.
Duty to provide Water services	11. (1) A water services provider shall, as the licensee, be responsible for the efficient and economical provision of water services so as to fulfill the rights to water and any other conditions specified in the license. (2) For the purpose of provision of water services, a water services provider, may- (a) purchase, lease or otherwise acquire, premises, plant, equipment and facilities; and (b) Purchase, lease or otherwise acquire land, or arrange for its compulsory acquisition in accordance with the applicable laws.
Functions of Water Service Providers	12. The functions of the waters service providers shall be – a) to provide water services within the specified area; b) to maintain water services and related works and Management of sludge regardless of its origins; c) collection, treatment and maintenance of the County assets for water provision; d) Development of county assets for water provisions as directed by the County Government
Regulations by Water Service Providers	13. (1) A water service provider may with the approval of the Executive Committee Member make regulations for or with respect to conditions for the provision of water services and the tariffs applicable (2.) If it appears to a water service provider to be necessary for the purpose of protecting against degradation any water Source, whether on the surface or underground, which belongs to it is for the time being authorised to take, it may, with the written approval of the Executive Committee Member make regulations— (a) defining the area within which he deems it necessary to exercise control; (b) prohibiting or regulating the doing, within that area, of any act prescribed by such regulations; and (c) Prescribing penalties not exceeding fifty thousand shillings for contravention of any such prohibition or regulation. Regulations under this clause shall be published in the Kenya Gazette and County Gazette and shall come into force on the date of such publication or on a later date specified in the regulations.
Duty to enforce Regulations for water	14. (1) it shall be the duty of any Water Service Provider to monitor and enforce any regulations made under this act, and

services

any Water Service Provider who fails to do so may be ordered by the Directorate to take such action to enforce such regulations as shall be specified in the order.

Supply of water in bulk

(2) Where a Water Service Provider considers that the operation of such regulations would be unreasonable in any particular case, the Water Service Provider may, by notice to any affected party, relax or dispense with the requirements of the regulation

15. (1) Any water service provider may enter into an agreement with any other person, whether a neighboring water service provider or groups of Consumer stakeholders within his area of jurisdiction for the supply of water in bulk on any terms and conditions as shall be agreed upon and shall be approved by the Directorate

(2) Where it appears to the Directorate that it is expedient that a water service provider should give a supply of water in bulk to another water service provider or group of Consumers within his area of jurisdiction; and the other water service provider or consumer group should take such a supply; and the giving and taking of such a supply cannot be secured by agreement, the Directorate may, by order served on them, require the water service providers and/or Consumer group concerned to give and take such supply for such period and on such terms as it may specify.

Protection of Water Sources etc

16. A Water Service Provider may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as the Water Service Provider considers necessary or as the conditions of his or her licence may require for the purpose of protecting the catchment, drainage of land, carrying out soil conservation measures or the control of vegetation or more effectively collecting, conveying or preserving the purity and quality of water which the Water Service Provider is for the time being authorized to take.

Power of Water Service Provider to Prohibit or Restrict use of Water.

17. (1) A Water Service Provider who is of the opinion that there is a serious deficiency or threat of a deficiency of water available for distribution may, with the approval of the Directorate, for such period as the Water Service Provider considers necessary, prohibit or restrict with respect to the whole or any part of its limits of supply, the use for any specified purpose of water supplied by the Water Service Provider.

(2) Before the prohibition or restriction in subsection (1) comes into force, notice shall be given by the Water Service Provider, in one or more newspapers of daily circulation, within the affected area or by such other means as the commission may approve, of the proposed prohibition or restriction and of the date when it will come into force.

(3) Regulations made under this act may provide that any

Execution of works for protection of water

person who, while such prohibition or restriction is in force, contravenes its provisions and commits an offence and on conviction shall be liable to a penalty fixed by regulation.

18. (1) A Water Service Provider may, on any land belonging to it, or on land over in which it has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise for preventing water belonging to the Water Service Provider, or which it is for the time being authorized to take, from being polluted.

(2) Where the proposed works will affect or are likely to affect any water resource, the Water Service Provider shall obtain the consent of the Directorate subject to any conditions as the Directorate and other agencies may impose before constructing any drain, sewer or other works.

Handling of Liquid effluent into sewerage system

19. (1) It shall be the duty of a Water Service Provider receiving liquid effluent into its sewerage system to ensure that it has in place measures for the receipt and handling of the effluent without causing:

- (a) Pollution of the environment
- (b) Harm to human health
- (c) Damage to the sewerage system; or
- (d) A contravention of applicable laws or contravention of standards set by the Directorate

(2) A person shall not discharge any trade effluent from any trade premises into the sewers of a Water Service Provider without consent of the Water Service Provider.

(3) The Water Service Provider's consent may be given subject to conditions, including conditions requiring pre-treatment and payments to the Water Service Provider of charges for the discharge

(4) Any person who is dissatisfied with the decision of the Water Service Provider on an application under this section may, within thirty days of the decision, appeal to the Directorate.

(5) A person who contravenes the provisions of this section commits an offence

Funds Collected by licensed water service Providers

20. (1) All funds collected for water services by the licenced water service providers holding county public assets on behalf of the public through water service bills and other resources shall be used entirely for the purpose of covering costs for the provision of water services and asset development

Clustering of areas of water service provision

21. (1) The Executive Committee Member may where it appears necessary for the purpose of securing a commercially viable water service Provider, by notice in the Gazette transfer a water service, or part thereof from one licensee to another licensee and vary the relevant licenses accordingly

- (2) An order made under this section may make such incidental, consequential and supplementary provision as the County Government deems necessary or expedient for the purpose of carrying out the order.
- Prohibition or restriction of use of water 22. (1) A water service provider who is of the opinion that there is a serious deficiency of water available for distribution or that such a deficiency is threatened may, with the approval of the Directorate, for such period as he thinks necessary prohibit or restrict, in respect to the whole or any part of his limits of supply, the use for any specified purpose of water supplied by him.
- (2) Before any such prohibition or restriction comes into force, public notice shall be given by the licensee, in one or more newspapers circulating within the affected area of the proposed prohibition or restriction and of the date when it will come into force.
- (3) Rules made under this Act may provide that any person who, while such prohibition or restriction is in force, contravenes its provisions shall be guilty of an offence and liable on conviction.
- Acquisition of land 23. A Water Service Provider who may require the compulsory acquisition of land for any of its purposes it may apply to the Executive Committee Member, who may, in collaboration with the National Land Commission, and upon being satisfied that such compulsory acquisition is desirable, take any steps necessary to secure the land in accordance with the Land Act.

Monitoring of Water Service Providers

- Water service provision inspectors 24. The County Executive may at any time appoint water inspectors among others to carry out spot inspections and post inspections on the water service providers on the compliance by the water service providers on service provision conditions including water and wastewater quality surveillance, Technical and Financial compliance and asset Maintenance surveillance
- Special regulatory regime 25. (1) Where the water services provider who persistently defaults in compliance with the conditions of its license or the requirements of the Act and having been notified by the Directorate to take such steps as are reasonably practicable in order to remedy any such failure has failed to do so, The County Executive Committee member may by notice in the gazette impose a special regulatory regime on a Water Service Provider
- 2) Under a special regulatory regime, the Directorate may impose on the licensee requirements relating to enhanced monitoring and reporting including removal of the senior management of the licensee, dissolution of the board of directors of the licensee, and the appointment of a special manager of the water services.
- Transfer of functions of 26. (1) If the County Executive Member is satisfied that,

Water Service Provider

notwithstanding the imposition of measures under a special regulatory regime, the default has not been remedied and is not likely to be remedied by the licensee, he may by notice in the Gazette, order the transfer to another licensee of the water services in question.

(2) The order of transfer shall make such provision as appears to the County Executive Member to be desirable or necessary with respect to any property or assets being used by the defaulting licensee for the purposes of providing the water services.

Reserve Powers of the Executive Committee Member

27. (1) The Executive Committee Member shall retain the residual power to provide water services to consumers which shall only be exercised in cases where and for the periods during which—
- (a) the water service provider for an area has been declared to be in default under this Act and an order made transferring the functions to the Executive Committee Member;
 - (b) there is an emergency leading to serious and widespread disruption of services and a water service provider is unable to deal with the situation.
- 2) The Executive Committee Member shall, to the extent necessary to enable the exercise of his powers under this clause, have power to—
- a) Transfer the management of any water asset developed or rehabilitated by the department, donor or community to either a water service provider or to a different management committee for purposes of achieving efficient and constant delivery of water services;
 - (b) purchase, lease or otherwise acquire premises, plant, equipment and facilities; and
 - (c) purchase, lease or otherwise acquire land.

Revocation of Service Provision Agreement

- a) (1) Notwithstanding the provisions of the paragraph (30)(2) above, the Executive Committee Member may suspend or revoke a service provision agreement on any of the following grounds.
 - a. Serious or repeated breach of the service provision agreement conditions,
 - b. Discovery of any fraud or intentional misrepresentation by a water service provider at the time of applying for the license.
 - c. Failure to meet statutory obligations

Rural Water Schemes

Rural Water service Providers

28. Residents of a catchment area who uses water for irrigation purposes may form an association under the Societies Act, Cooperatives Act, or other legally recognized framework to be

	called Water Users Association for the better administration of the Users' interests and obligations with respect to use and conservation of water.
Water Users Associations	29. Water Users Associations (WUAs) shall be supported to develop small scale piped systems for the better administration of the Users' interests and obligations
Governance of Water users Associations.	30. The County Executive Member in consultation with all stakeholders may make Rules for the establishment, governance of water users' associations including Tenure and qualification of Water Users Association leaders/Directors.
Water Use Fees	31. A Water Users Association may set and collect from its members water Use service fees based on the actual costs of operation and full maintenance of the same, provided that the fees referred to in this subsection shall be approved by the County Executive Member
Service Provision Agreement	32. Every water Users Association licensed under this Act shall enter into a written Service Provision Agreement (SPA) with the County Government for purposes of identification and development of sustainable irrigation projects
Equitable use of water	33. Every licensed Water Users Association shall ensure equitable water use and distribution through installation of Meters at scheme level
	PART III – COUNTY WATER SERVICES BOARD
Establishment of County Water Service Board	34. (1) There is established a Board to be known as the County Water Services Board. (2) The Board shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of - (a) Taking, purchasing or otherwise acquiring, including charging or disposing of immovable property; (b) Borrowing money or making investments; (c) Entering into contracts and (d) Doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate in furtherance of their objects.
Functions of the County Water Services Board	35. The functions of the County Water Services Board shall include- (a) Subject to any other written law regulate water and Sewerage services in the County; (b) Develop County public water works for water services provision; (c) In cooperation with other government agencies regulate development of infrastructure and systems for water and Sewerage services in the County; (d) Issue authorization and /or licenses to water service providers intending to carry out any water and Sewerage services provision as

defined under this Act,

(e) Formulate development and investment plans for rural and urban areas aggregated from the county development plans and established by the county water service providers and through the County Government water services institutional structure for their designated areas

(f) Provide technical assistance to the water services providers as County Government agents for County asset development

(g) Hand over developed public assets to the licensed water services providers, or to the county water Directorate according to the rules of the County Executive Member;

(h) Ensure compliance by the Service Providers with the established standards related to water and Sewerage services and works;

(i) Receive and address complaints from water consumers and any person affected by a decision of the Water Service Providers;

(j) Maintain data and information related to water and Sewerage services and disseminate it to the public;

(k) Validate the water and sewerage tariffs proposed by the water service providers for approval by the National Regulator.

(l) Mobilizing resources for water resources management and development and Sewerage services;

(m) Monitoring and evaluating the implementation of this Act and the water sector

Composition of the Board

36.(1) The Board shall have 11 members comprised of -

(a) A Chairperson appointed by the Governor

(b) The Chief Officer responsible for matters relating to Water and Sewerage Services.

(c) The Chief officer responsible for matters related to finance

(d) six members qualified in matters related to water and appointed by the County Executive Member from the sub counties;

(2) The Chief executive officer shall be an ex officio member of the board with no voting rights

(3) The Chairperson and members of the Management Board shall hold relevant professional qualifications and experience and shall be appointed following an open and competitive recruitment process.

(4) The Executive Member shall provide for guidelines for the appointment of the board of directors and specify the respective qualifications, professional capacity, experience and necessary conditions on Corporate governance and integrity.

Funds of the Water Services Boards

37. The funds of the Water Services Boards shall consist of:

a. Such funds as may be vested in or accrue to the Water Services Board in the performance of the function under this Act including agency fee and lease fees from Water Service Providers

b. Moneys allocated by the County Assembly for the purposed Water Services Board

c. any grant, credits, gifts, donation and other endowments

provided to the Water Services Board as the County Executive Committee Member may approve

Regional Water Services Board

38. Notwithstanding the provisions of clause 30 above, the County may enter into agreement with neighboring counties to establish a Regional Water Services Board to carry out functions of the County Water Services Board s as per clause 35 above.

PART IV – SEWERAGE SERVICES

Control of effluent

39. (1) No person shall discharge any trade or liquid effluent from any premises into the sewers of a water service provider without the consent of the water service provider.

2) An application for consent shall be made to the water services provider and shall state —

- (a) the nature or composition of the trade effluent;
- (b) the maximum quantity of the effluent which it is proposed to discharge on any one day;
- (c) the highest rate at which it is proposed to discharge the effluent; and
- (d) any other information required by the water service provider.

(3) The water service provider's consent may be given subject to conditions, including conditions requiring the payment to the water service provider of charges for the discharge.

(4) Such consent shall be granted upon consultation with the Executive Committee Member

Execution of works for protection of water

40. (1) A Water Service Provider may, on any land belonging to him, or over or in which he has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise for preventing water belonging to the water service provider, or which he is for the time being authorised to take, from being polluted:

(2) Any water service provider proposing to construct any such drain, sewer or other works may, with the consent of the National Environment Management Authority and any other relevant authorities concerned and subject to such conditions as the authority may impose, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the limits of supply of the water service provider.

Privately developed Sewers

41. Any privately developed sewer approved and supervised by the water service Provider and connecting to public facilities will revert to public use after one year maintenance period. Any claims for the construction costs shall be lodged to the water service provider within one year after construction.

Sewerage service levy

42. A water service provider may with the approval of the Executive Committee Member, fix and impose a sewerage

services levy amounting to not more than 75% on all water services charge within the limits of supply of the licensee, to cover a reasonable part of the cost of disposing of the sewage within those limits.

PART V – STORM WATER MANAGEMENT

Provision of infrastructures

43. (1) The County Government may -
- (i) Construct, expand, alter, maintain or lay any drains, pipes or other structures related to the storm water drainage system; on or under immovable property
 - (ii) Drain storm water or discharge water from any county public works into any natural water course; and
 - (iii) Do any other thing necessary to give effect to the provisions of this Act.
- (2) Ownership of any drains, pipes or structures related to storm water shall vest in the County Government.

Protection of storm water system

44. (1) A person shall not, unless with the written consent of the County Government and subject to any conditions it may impose-
- (a) Discharge, permit to enter or place anything other than storm water into the storm water system;
 - (b) damage, endanger, or destroy the storm water system or its operation;
 - (c) construct or erect any structure or thing or over or in such a manner to interfere with or endanger the storm water system or its operation;
 - (d) discharge, permit to enter or place anything likely to cause storm water pollution;
 - (e) make an opening into a storm water pipe, canal or culvert;
 - (f) drain, abstract or divert any water directly from the storm water system;
 - (g) fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the storm water system;
 - (h) Connect or direct storm water into the Public sewerage system
 - (i) Connect or Direct the Sewerage system to the storm water drains.
- (2) Any person who contravenes with the provisions of subsection (1) shall be liable on conviction to a fine of one hundred thousand shilling or imprisonment for term not exceeding six months or both.

Participation by all actors

45. The County Government shall promote participation of all actors through a competitive process including but not limited to individual persons, firms, corporate and Community Based Organizations in all aspects of cleaning and Maintenance of storm water drains in built up areas to the extent reasonable in pursuit of high quality and sustainable standards of environment including but not limited to provision of services and exercise of individual responsibilities

Potential Flood risk

46. No person shall impose or undertake in any activity which alone

	or in combination with other existing or future activities, may cause an increase in the flood levels or create a potential flood risk.
Prevention of flood risk	47. No person shall impose or undertake any activity which alone or in combination with other existing or future activities, may cause an increase in the flood levels or create a potential flood risk.
Studies and assessment	48. (1) The conditions which the County Government may impose in Section 46 and 47 may include; <ul style="list-style-type: none"> a. the establishment of flood lines; b. the undertaking of impact assessments, and c. environmental impact studies or investigations which may be required by any applicable environmental laws (2) Any study done under subsection (1) will be at the expense of the applicant.
Water pollution incidents	49. (1) Where there is a storm water pollution incident, the owner of the property on which the incident took place or is still in the process of taking place or the person responsible for the incident shall immediately report the incident to the County Government. <p>(2) The County Government may in its opinion require that such persons take all reasonable measures to minimize the effects of the pollution at their own cost.</p>
Storm water systems on private land	50. Every owner of property on which private storm water systems are located shall, <ul style="list-style-type: none"> (i) not carry out any activity which could reasonably be expected to impair the effective functioning of the storm water system, and (ii) at own cost, keep such storm water systems functioning effectively, including undertaking its refurbishment or reconstruction (iii) the provisions of subsection (ii) shall not apply where the County Government has accepted responsibility for any of the duties in a formal agreement or in terms of a condition of a servitude
Regulations	51. The county executive member for the time being responsible for matters related to water and Sewerage services may make regulations relating to the manner of disposing water falling or coming to rest within private property.
Penalties for Default	52. (1) No person shall, without authority under this act or any other written law wilfully obstruct, interfere with, divert or abstract a storm water Course, or negligently allow any such obstruction, interference, diversion or abstraction. <p>(2) A person who contravenes this shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment of a term not exceeding twelve months or to both.</p>

PART VI – WATER RESOURCES MANAGEMENT

- Establishment of a Directorate for water resource management
53. There is established a Directorate known as the Directorate for Environment and Natural Resources Management
- Other staff
54. The County Public Service Board may appoint such other officers and assistants as may be necessary for the effective functioning of the directorate.
- Powers and functions of Directorate
55. The functions of the directorate shall include but not limited to
- (a) Through intergovernmental relations Act, County Government Act and any other written laws, collaborate with other county governments and Basin Authority in conservation and protection of water sources and catchments of strategic importance
 - (b) formulate and implement National and County standards, procedures and rules for the management and use of water resources and flood mitigation
 - (c) Support financing of water conservation and catchment protection areas within the County
 - (d) Support reserve flow maintenance facilities.
 - (e) Approval and monitoring of implementation of sub catchment management plans developed by Water Resource Users Associations,
 - (f) monitor compliance by water users with the conditions of Licenses and the requirements of the Bill
 - (g) collect, analyze and disseminate Data and information on water resources;
 - (h) ensure access to information on water resources
 - (i) liaise with other Counties, regional, national bodies for the better regulation of the management and use of water resources;
 - (k) Advise the County Executive Member in-charge of Water on development and management of water resources.
- Catchment areas water resources management strategies
56. (1) Upon the designation of catchment area by a basin Authority, the directorate shall formulate a County water resources management strategy which shall -
- a. Be consistent with the national water resources policy;
 - b. Put in place measures to fulfil the water resource quality objectives for each class of water resource in the catchment area;
 - c. Describe the measures to be put in place for the sustainable management of water resources of the catchment area;
 - d. Provide a strategy for financing the management of the water resources of the catchment.
- (2) The Directorate may impose through a notice in a gazette such conditions and requirements regulating or prohibiting certain activities in relation to the water conservation area

Establishment of Water Resource Users Associations	<p>57. (1)The Water Resource Users Association shall be established as association of water resource users at Sub Catchment level.</p> <p>(2) Water Resource Users Association shall be community based associations for catchment protection, collaborative management of water resources and conflicts resolution concerning the use of water resources.</p> <p>(3) The County Government may contract Water Resource Users Associations as agents to perform some functions in catchment protection and water resource management.</p>
Designation of Catchment areas	<p>58. The County Executive Member may in consultation with the Regional Basin Authority by notice published in the Gazette designate a defined area lying wholly or partly within an area from which rainwater flows into a watercourse to be a sub catchment area for the purposes of this act.</p>
Sub Catchment Management plans.	<p>59. (1) Each Sub Catchment, represented by a the Water Resources Users Associations (WRUA) shall in consultation with the Directorate formulate a Sub Catchment Management plan which shall -</p> <p>(1) provide systems, facilities and incentives to enable users of water resources within the catchment participate in managing the water resources of the catchment area.</p> <p>(2) Each sub catchment water resources management plan in force for the time being, shall be published in the Kenya Gazette.</p>
Monitoring water Allocation plan	<p>60. The County Government shall collaborate with the National Water Resources management Authority, the intra-County Basin authority and the Water Resource Users Association to monitor the water allocation plan for the sub Catchment area.</p>
Management of wetlands.	<p>61. The Directorate shall develop and gazette guidelines for sustainable management of wetlands</p>
Demarcation of riparian land	<p>62. The Directorate shall in consultation with national, intra county basin agencies and other stakeholders develop and gazette guidelines demarcating riparian lands</p>
Prohibited activities on riparian land	<p>63. A person shall not carry any of the following activities on riparian land:-</p> <p>(a) Tillage or cultivation</p> <p>(b) Clearing of indigenous trees or vegetables</p> <p>(c) Building of structures</p> <p>(d) Disposal of any form of waste within the riparian land</p> <p>(e) Excavation of soil or development of quarries</p> <p>(f) Planting of exotic tree species that may have effect to the water resource or any other activity that in the opinion of the Directorate may degrade the water resource</p>
Remedy of defaults	<p style="text-align: center;">PART VII - GENERAL PROVISIONS</p> <p>64.(1) Without prejudice to any other remedy or course of action, if a person contravenes any provision under this Act, then, the</p>

Directorate and/or the Water Service Provider concerned may, by order served on the person concerned, order to remedy the contravention and in particular-

(a) To clean up any pollution or make good any other harm identified in the order which was caused to any water resource by reason of the contravention; or

(b) To remove or destroy any works, plant or machinery employed for the purposes of the contravention.

(2) Where the order in subsection (1) has not been complied with, the Water Service Provider may take such steps as are necessary to remedy the contravention, and the expenses incurred in doing so shall be recoverable at the instance of the Water Service Provider concerned.

(3) A person aggrieved by an order under this section may appeal to the Water Appeals Tribunal.

Power of entry

65. An employee or agent of a water services provider authorised for the purpose may without warrant, enter to any kind or premises in the area to which any regulations of the water services provider and inspect for the purpose of—

a. ascertaining whether there is or has been any contravention of any such regulations;

b. in the case of any regulations in respect of tariffs and the payment therefore, exercising any right conferred on the licensee to cut off supplies for non-payment; or

c. in the case of any regulations made for preventing water degradation to :—

i. ascertaining whether or not circumstances exist which would justify the water service provider's imposing a requirement to execute works or take other action to prevent degradation; or

ii. exercising any right conferred on the licensee to execute and maintain works or take other action.

iii. Preserving the water from pollution or protecting the bed over which it lies or flows; or

iv. Removing any obstruction from, or for clearing and deepening, the bed, or

v. Prevent the excessive or illegal diversion, waste or pollution of water or interference with any such bed.

Notice of entry

66. (1) An Inspector or authorized person shall not enter to the land or premises without first giving reasonable notice, whether written or verbal, to the landholder or his employee or agent in charge of the land or premises, and such entry shall be at reasonable hours provided that an Inspector may enter without giving notice if—
- a) he has reason to believe that a provision of this Act or of any rule or order made under this Bill has been or is about to be contravened;
 - b) he is unable to give notice within a reasonable time having regard to all the circumstances; or
 - c) he has given reasonable grounds for not giving notice.
- 2) If so requested by the owner or occupier of the land or premises, the Inspector or authorised person shall produce evidence of his right or permission, as the case may be, to enter on to the land.

It shall be the duty of any person exercising any powers under this clause to do so with reasonable care and in such a manner as to cause as little damage as possible in so doing.

Rules

67. The Executive Committee Member may make rules for or with respect to any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act..
- (2) without prejudice to the generality of the foregoing, rules may be made under this clause for-
- a) prescribing the amount of fees payable under this Bill generally or in particular cases;
 - b) the circumstances in which licences, agency fees and agreements may be applied for, granted, varied, refused or cancelled, and the manner in which a person to whom a licence is granted may exercise a right or privilege conferred upon him by the licence;
 - c) forms to be used under this act;
 - d) Provision of bottled or mineral water.
- (3) Rules made under this section may create offences in respect of any contravention of the rules and may for any such offence impose penalties not exceeding one million shillings or imprisonment not exceeding two years, or both such fine and imprisonment.
- (4) Rules made under this Act shall be published in the Gazette and shall come into effect upon such publication.

Miscellaneous offences

68. (1) No person shall, without authority under this Bill or other written law wilfully obstruct, interfere with, divert or abstract water from any watercourse or water resource, or negligently allow any such obstruction, interference, diversion or abstraction.
- (2) No person shall, without authority under this Bill or any other written law-:
- a. throw or convey, or cause or permit to be thrown or

conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or likely to cause, pollution of the water resource.

- b. Wilfully obstruct, molest or hinder any inspector or employee of a person authorised by the County Executive Committee Member, or a Water Service Provider in the exercise or performance of his or her powers and functions under this Act;
 - c. Deface, alter or remove; or cause to be defaced, altered or removed, any documents, survey mark, water gauge, weir or measuring device or other work, structure or approval installed with the approval of the Directorate for investigation;
 - d. Wilfully hinders or interrupt, or cause be hindered or interrupted, any Water Service Provider , or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act; or
 - e. Wilfully reconnects water after disconnection or Connects water without approval of a water service provider or Water Users Association,
 - f. Neglects or fail to comply with lawful order given under this Act.
69. (1) No action shall lie against the Directorate or any of its officers, inspectors or authorized persons in respect of anything done or omitted to be done by them in good faith in the exercise of or performance of any power, authority or duty conferred or imposed by them under this bill
- (2) Notwithstanding sub clause (1) above, a person employed by the Directorate shall be personally liable for any act or omission done or Committed in the performance of his functions under this Bill if, having regard to the circumstances of the case, such act or omission is-
- a. done or committed wilfully or dishonestly by such person;
 - b. due to the negligence of such person; or
 - c. Committed by the person in contravention of the provisions of this Bill.

Penalties

70. Any person who contravenes any of the provisions above shall be guilty of an offence and shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment of a term not exceeding twelve months or to both.
71. A person who is guilty of an offence under section 68 above that is of a continuing nature shall be liable, in addition to the penalty stated above to a further penalty of not more than

Transfer of functions
assets, Obligations,
agreements and other
arrangements to Water
Service Providers

double the gazetted cost of the service for each day during which the offence continues.

- 72.(1) All agreements licenses and other arrangements for water services provision on property, assets, rights, liabilities, obligations wholly owned by the County Government shall be deemed to have been vested in or to have been acquired, incurred or entered into by or on behalf of the County Government and shall lapse upon commencement of this Act.
- (2) All agreements, licenses and other arrangements for water services provision on property, assets, rights, liabilities, obligations wholly owned by the National Government and/or Water Services Boards shall continue in force until gazettment of transfer of assets plan by the Transition Authority.
- (3) Any other public property, liabilities and contract for water services provision shall vest in and become property, liabilities of the County Government subject to such terms for provisions as may be specified in the Regulations for the exception of public property, liabilities and contracts;

Transfer of functions,
Obligations, agreements
and other arrangements
to Water Resource Users

73. All agreements, Catchment management plans and other arrangements on Water Resources entered with the Water Resource Users Association shall be deemed to have been entered with the County Government on commencement of this act.

MEMORANDUM OF OBJECTS AND REASONS

The legislative proposal giving rise to this Bill was submitted by the County Executive Committee Member for Water, Environment and Natural Resources. The main object of this Bill is to make provision for the regulation, management, conservation, use and development of water and sewerage services. The purpose of the Bill is to give effect to the provisions of Article 187 and schedule IV paragraph 10 (a) and paragraph 11 of the Constitution.

PART I of the Bill provides for the preliminary provisions including the commencement date.

PART II of the Bill provides for the Administration and provision of water and sewerage services, Establishment of Water Services providers, their functions and the provisions for regulation of the said water service providers.

PART III of the Bill provides for the establishment of the County Water Services Board its functions and composition.

PART IV of the Bill provides for the provision of sewerage services and regulation of the sewerage services.

PART V of the Bill provides for Storm Water Management through creation of infrastructure, protection of the storm water system and regulation of the service.

Part VI of the Bill provides for Water Resource Management and creation of a directorate for water resource management.

PART VII of the Bill provides for the general provisions which include rules and the miscellaneous offences and penalties in respect to water and sewerage services provision.

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

This Bill is not a money bill within the meaning of Section 114 of the Constitution and Section 21 of the County Government Act.

Dated this Day of 2016

Bernard Maina Kinga
Chairman- Water, Irrigation, Environment and Natural Resource Committee